

REMARKS

Claim Status

Claims 1-17 are pending in the present application, with claims 14-17 withdrawn. No additional fee is believed to be due.

Double Patenting Rejection

Claims 1-13 stand rejected on the ground of nonstatutory obviousness-type double patenting as being allegedly unpatentable over claims 1-20 of U.S. Patent No. 6,866,212. In response, applicant submits herewith a Terminal Disclaimer as to U.S. Patent No. 6,866,212. Thus, the rejection should be withdrawn.

It should be noted that the filing of the terminal disclaimer is not an admission as to the propriety of the double patenting rejection, as also set forth in Section 804.02 of the Manual of Patent Examining Procedure (MPEP), a portion of which is quoted below:

The filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). The court indicated that the “filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection.”

See also Ortho Pharmaceutical Corp. v. Smith, 22 U.S.P.Q.2d 1119 (Fed. Cir. 1992). Consequently, the fact that the applicants do not address the substance of the double patenting rejection should not be construed as an admission of the correctness of the double patent rejection or that the applicant agrees with the statements made in support of the rejection.

Rejection Under 35 U.S.C. 102 by Perkins et al.

Claims 1-7 and 10-13 stand rejected under 35 U.S.C. 102(b) as being allegedly anticipated by Perkins et al. (U.S. Patent No. 5,566,042). Thus, while not specifically stated, claims 8 and 9 appear to be allowable.

Applicants have amended claims 1 and 13 to recite that the high voltage power supply at least one of deactivates the delivery of the product from the reservoir prior to deactivating and activates prior to activating the delivery of the product from the reservoir. In this regard, claims 1 and 13 recite the limitations of claims 8 or 9, which appear from the present action to have been considered to be allowable. Consequently, claims 1 and 13 should be allowable, and the rejection of the claims should be withdrawn.

Claims 2-7 and 10-12 depend from claim 1, and the rejection of these claims is based on the application of Perkins et al. to claim 1. However, as noted above, claim 1 should be allowable over Perkins et al. Consequently, for at least this reason, claims 2-7 and 10-12 should also be allowable over Perkins et al.

Conclusion

In view of the foregoing, it is respectfully submitted that the above application is in condition for allowance, and reconsideration is respectfully requested. If there is any matter that the examiner would like to discuss, the examiner is invited to contact the undersigned representative at the telephone number set forth below. In any event, the Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith to our Deposit Account No. 13-2855, under Order No. 30766/40040.

Dated: February 27, 2008

Respectfully submitted,

By 

Paul C. Craane

Registration No.: 38,851

MARSHALL, GERSTEIN & BORUN LLP

233 S. Wacker Drive, Suite 6300

Sears Tower

Chicago, Illinois 60606-6357

(312) 474-6300

Attorney for Applicant